IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No. 61 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE J.R.VORA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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RAMBHAI NARANBHAI PARMAR & ANR
Versus
STATE OF GUJARAT

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Appearance :
MR HRIDAY BUCH for Applicants
MR AY KOGJE APP for Respondent

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CORAM : HONOURABLE MR.JUSTICE J.R.VORA

Date : 17/06/2006

ORAL JUDGMENT

1. Heard learned advocate Mr.Hriday Buch for the applicants and learned APP Mr.A.Y.Kogje for the respondent – State of Gujarat.

2. This Criminal Revision Application is preferred against an order passed by the Presiding Officer, Fast Track Court No.5, Junagadh at Una. As per the facts of the case, the learned trial Judge framed charge at Ex.23 in Sessions Case No.67 of 2000 against the present applicants and, thereafter, Ex.28 came to be filed by the accused – present applicants stating that they are required to be discharged for the offence punishable under Section 302, as according to them, there is no prima facie case for the offence punishable under Section 302, against them. Learned trial Judge decided that application stating that when vide Ex.23 on 09.01.2006 in pursuance of Section 228 of the Criminal Procedure Code, charge is already framed, the present accused

have no locus standi to pray for discharge and hence this revision application.

3. Learned counsels were heard in respect of this Criminal Revision Application and from contentions raised and going through the record. It appears that the learned Judge has framed the charge under Section 228. Accused perhaps are late in their submissions for discharge or they have got no opportunity before framing such charge to address the Court. When an accused requesting a Criminal Court to discharge him, it would be the duty of the Court to examine the contentions of the accused with reference to Section 227 of the Criminal Procedure Code and come to the conclusion to frame a charge. This settled legal position is un-combated.

4. In this view of the matter, this Criminal Revision Application is allowed and charge framed at Ex.23 by the trial Court on 09.01.2006 as well as order impugned both are quashed. It is further directed that the

present accused shall prefer proper application with grounds before the trial Court for discharge within 15 days from today. On submitting such application, learned trial Judge shall give opportunity to the parties to be heard and shall pass necessary orders of framing charge or to discharge the accused. Rule is made absolute to the above extent. Direct service is permitted.

[J. R. VORA,J.]

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